STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Dorchester County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL GENTILE,

PETITIONER

APPELLATE CASE NO 2017-001277

BRIEF OF PETITIONER

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

ISSUE PRESENTED 1

STATEMENT 2

STATEMENT OF FACTS 3

ARGUMENT 4

CONCLUSION 14

TABLE OF AUTHORITIES

Cases

Blanton v. State, 324 Ga.App. 610, 614(2) S.E.2d 431 (2013) 12

O'Rourke v. State, 327 Ga.App. 628, 631 S.E.2d 636 (2014) 12

People v. Garcia, 141 A.D.3d 861, 863 N.Y.S.3d 766, 769 (N.Y. App. Div.), leave to appeal denied, 28 N.Y.3d 929, 63 N.E.3d 78 (2016) 12

People v. Jabot, 93 A.D.3d 1079, 1080 N.Y.S.2d 311 (2012) 13

People v. Morris, 61 N.Y.2d 290, 296 N.Y.S.2d 769, 461 N.E.2d 1256 (1984) 13

People v. Porlier, 55 A.D.3d 1059, 1060 N.Y.S.2d 732 (2008) 12

People v. Watt, 81 N.Y.2d 772, 774 N.Y.S.2d 782, 609 N.E.2d 135 (1993) 12

State v. Baker, 411 S.C. 583, 769 S.E.2d 860 (2015) 4, 5, 7, 8

State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) 6, 7, 8

State v. Layman, 279 Ga. 340, 341 S.E.2d 639 (2005) 12

State v. Tumbleston, 376 S.C. 90, 97 S.E.2d 849 (Ct.App.2007) 7, 8

State v. Wade, 306 S.C. 79, 82 S.E.2d 780 (1991) 7, 9

Watkins v. State, 336 Ga. App. 145, 147 S.E.2d 11 (2016) 12

Statutes

§17-19-10 of South Carolina Code of Laws 6

§16-3-655 of South Carolina Code of Laws 9

§16-15-140 of South Carolina Code of Laws 6

Rules

Rule 220(b), SCACR 8

Rule 801(d)(1)(D), SCRE 3

Constitutional Provisions

S.C. Const. art. I, § 11 5

ISSUE PRESENTED

Did the Court of Appeals err in failing to find that the trial judge erred in refusing to quash as unconstitutionally overbroad and vague the indictment for lewd act, true billed by the grand jury on June 4, 2015, eleven days before trial, and alleging that the offense took place between January 1, 2010, and September 1, 2012, when, over two years earlier on March 7, 2013, the grand jury indicted Petitioner only for criminal sexual conduct with a minor first degree occurring on or about January 1, 2009?

STATEMENT

On March 7, 2013, the Dorchester County Grand Jury indicted Petitioner Gentile for criminal sexual conduct with a minor first degree occurring on or about January 1, 2009, indictment #2012-GS-18-1480. (First CSC w/ Minor indictment, R. p. 203). Over two years later on June 4, 2015, the Dorchester County Grand Jury indicted Petitioner for lewd act upon a child under sixteen occurring between January 1, 2010, and September 1, 2012, indictment #2015-GS-18-0598. (Lewd Act indictment, R. p. 199). It appears that on June 4, 2015, the same day as the Grand Jury indicted Petitioner for the lewd act charge, the State re-presented the earlier indictment for criminal sexual conduct with a minor first degree to the Grand Jury with an expanded time frame of between January 1, 2010, and September 1, 2012. (Second CSC w/ Minor indictment, R. p. 201). On June 15, 2015, Petitioner proceeded to jury trial on both the criminal sexual conduct with a minor indictment with the expanded time frame and the lewd act indictment before the Honorable Maite Murphy. Pierce Wehman and John Loy represented Petitioner at trial. Kyle Ward and Sheila Mims prosecuted the case. The jury returned a verdict of not guilty for criminal sexual conduct with a minor first degree but guilty of lewd act. Judge Murphy sentenced Petitioner to fifteen (15) years suspended upon the service of fourteen (14) years with four (4) years of probation to follow. A timely notice of intent to appeal was served on June 22, 2015, and the direct appeal perfected. On March 8, 2017, the South Carolina Court of Appeals, in an unpublished opinion, affirmed the conviction and sentence. State v. Gentile, Op. No. 2017- UP-108 (S.C.Ct.App. filed March 8, 2017) A timely petition for rehearing was filed and denied on May 1, 2017. On May 31, 2017, the petition for writ of certiorari was filed with this Court. The return was filed on June 30, 2017. On January 12, 2018, this Court granted the petition for writ of certiorari. This brief of petitioner follows.

STATEMENT OF FACTS

Petitioner began dating the Minor's mother in May of 2010, and in May or June of that same year moved in with the Minor's mother, the Minor and her younger brother. (R. p. 63, line 6- p. 64, lines 1-9). The four lived in a two bedroom, one bath apartment. At the time of trial in June of 2015, the Minor was 12 years old.

At trial the mother testified that on August 31, 2012, she discovered some things on the Minor's phone that resulted in the mother calling the police. (R. p. 65, line 15 – p. 66, lines 1-25). At the time the police were notified Petitioner was driving a truck for a living, on the road and not at home. (R. p. 65, lines 19-20). The mother did not testify about any statements made by the minor limited to time and place by Rule 801(d)(1)(D), SCRE. The police officers who went to the apartment that night did not testify at trial. The minor was later interviewed at the Dorchester Children's Center. (R. p. 67, lines 14-25). The video of the interview was admitted in evidence as State's Exhibit #3 and played for the jury without objection. (R. p. 92, line 1-11).

On March 7, 2013, the Dorchester County Grand Jury indicted Petitioner for criminal sexual conduct with a minor first degree, indictment #2012-GS-18-1480. Over two years later on June 4, 2015, eleven days before trial, the Dorchester County Grand Jury indicted Petitioner for lewd act upon a child under sixteen, indictment #2015-GS-18-0598. Additionally, on June 4, 2015, the State expanded the time frame in the original criminal sexual conduct with a minor first degree indictment from on or about January 1, 2009, to between January 1, 2010, and September 1, 2012. On June 15, 2015, Petitioner proceeded to jury trial, on both indictments. The jury found Petitioner not guilty of criminal sexual conduct with a minor first degree. The appeal involves the conviction for lewd act.

ARGUMENT

The Court of Appeals erred in failing to find that the trial judge erred in refusing to quash as unconstitutionally overbroad and vague the indictment for lewd act, true billed by the grand jury on June 4, 2015, eleven days before trial, and alleging that the offense took place between January 1, 2010, and September 1, 2012, when, over two years earlier on March 7, 2013, the grand jury indicted Petitioner only for criminal sexual conduct with a minor first degree occurring on or about January 1, 2009.

Petitioner was initially indicted for criminal sexual conduct with a minor first degree on or about January 1, 2009, indictment #2012-GS-18-1480. (First CSC w/ Minor indictment, R. p. 203). On June 4, 2015, eleven days before trial, Petitioner was indicted for lewd act upon a child under sixteen between January 1, 2010, and September 1, 2012, indictment #2015-GS-18-0598. (Lewd Act Indictment, R. p. 199). Additionally on June 4, 2015, eleven days before trial, the State amended the original criminal sexual conduct with a minor first degree indictment to expand the time frame from on or about January 1, 2009, to between January 1, 2010, and September 1, 2012. (Second CSC w/ Minor indictment, R. p. 201).

Prior to trial Petitioner, relying on State v. Baker, 411 S.C. 583, 769 S.E.2d 860 (2015), moved to quash both the lewd act indictment and the criminal sexual conduct with a minor first degree with the expanded time frame as unconstitutionally overbroad and vague in violation of Petitioner's state and federal constitutional right to due process of law. (R. pp. 15-20). Petitioner argued, "What I'm saying is that no amount of time is enough to prepare two years and nine months to determine whether he had an alibi defense. Mr. Gentile is a truck driver. He's on the road for long periods of time. If, as in the first indictment, there was a one day or two day or a week or some sort of narrowed framed, it – it might be that he would have an alibi in this case. But due to the length of the timeframe in the indictment itself, he's essentially stripped of that defense, Your Honor." (R. p. 17, lines 11-20).

The trial judge denied the motion to quash ruling:

> Based upon the case law, it – and certainly the Court does not find that it's an overly broad time period. The indictments in this case do give the defendant sufficient certainty and particularity – it apprises him of the elements of the offense to be charged, and gives him the opportunity to – to review that time period. And, basically, he's called to know what he's called upon to answer and may plead accordingly. And it certainly, based upon the review of the actual indictments, it – the offenses are stated with sufficient particularity to enable the court to know which judgment to pronounce, so the Court is – your motion is denied.

(R p. 19, lines 10-23). Petitioner additionally argued that the time frame was such that he could not protect himself from further prosecution from other allegations that could later be raised during the same time frame. (R. p. 20, lines 3-14). The judge again denied the motion to quash. (R. p. 20, lines 21-24). The challenge to the indictments as constitutionally overbroad and vague was preserved for appellate review.

The jury returned a verdict of not guilty for criminal sexual conduct with a minor first degree but guilty of lewd act. The trial judge erred in refusing to quash the new indictments as unconstitutionally overbroad and vague. The expanded non-specific time frame lacked specificity as to when the alleged acts occurred and the State failed to show circumstances warranting the expanded time frame. Additionally, the State failed to demonstrate that the time span in the indictments was narrowed as much as possible.

In State v. Baker, 411 S.C. 583, 592, 769 S.E.2d 860, 865 (2015), this Court wrote:

> Accordingly, we hold the trial judge erred in refusing to quash the indictments as the non-specific, six-year period covered in the indictments was unconstitutionally overbroad because it lacked specificity as to when the alleged acts occurred. It is axiomatic that an indictment must include more than the elements of the charged offense. Therefore, we reverse Baker's convictions.

In finding the indictments unconstitutionally overbroad in Baker, this Court discussed the constitutional and statutory requirements of an indictment and wrote:

> An indictment is a critical document in criminal defense preparation that is grounded in constitutional and statutory principles. *See* S.C. Const. art. I, § 11

> ("No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed...."); S.C.Code Ann. § 17–19–10 (2014) ("No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury...."). As we explained in State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005):
>
> The indictment is the charge of the state against the defendant, the pleading by which he is informed of the fact, and the nature and scope of the accusation. When that indictment is presented, that accusation made, that pleading filed, the accused has two courses of procedure open to him. *He may question* the propriety of the accusation, *the manner in which it has been presented,* the source from which it proceeds, and have these matters promptly and properly determined; or, waiving them, he may put in issue the truth of the accusation, and demand the judgment of his peers on the merits of the charge. If he omits the former, and chooses the latter, he ought not, when defeated on the latter,—when found guilty of the crime charged,—to be permitted to go back to the former, and inquire as to the manner and means by which the charge was presented.
> Id. at 102, 610 S.E.2d at 499–500 (citations omitted) (emphasis added).

411 S.C. at 588–89, 769 S.E.2d at 863.

In footnote #5 this Court wrote, "We emphasize that our decision does not preclude the State from re-indicting Baker for the four counts of committing a lewd act upon a minor that he was convicted by using appropriate time limitations for the charged offenses. Had the indictments alleged that the conduct occurred during the summer months of the years 1998 through 2004, i.e., June 1 until September 1, we believe the indictments would have been sufficient." Id.

The indictment in the present case alleges, "That in Dorchester County, South Carolina, on or about January 1, 2010 to September 1, 2012, the defendant, Michael Edward Gentile, being over the age of 14 years old, did willfully and lewdly commit or attempt to commit a lewd or lascivious act upon the body or its parts of [Minor], a child under the age of sixteen (16) years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or the child. This offense in violation of Section 16-15-140, of the South Carolina Code

of Laws, as amended." (R. p. 199, Lewd Act indictment). The original indictment for criminal sexual conduct with a minor alleged that the offense took place on or about January 1, 2009. (First CSC w/ Minor indictment, R. p. 203).

At trial the Minor testified that, "He touched me in my places and did a lot of things" in the locked bedroom of the apartment where the Minor, her brother, her mother and Petitioner lived. (R. p. 73, lines 8-10). The Minor's mother described the apartment as a two bedroom, one bath apartment. (R. p. 64, lines 4-14). The mother testified that she worked during the day and Petitioner worked at night so Petitioner was in charge of watching the minor and her brother while the mother was at work during the day. (R. p. 64, line 18 – p. 65, lines 1-11). The mother testified that Petitioner worked for a security company and then later drove a truck for a living. (R. p. 65, lines 6-20).

In Baker this Court relied on language from State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) in addressing the sufficiency of an indictment writing:

> If a defendant raises a timely challenge to the sufficiency of an indictment, the reviewing court is charged with: determining whether (1) *the offense is stated with sufficient certainty and particularity* to enable the court to know what judgment to pronounce, and *the defendant to know what he is called upon to answer* ***and*** *whether he may plead an acquittal* or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged. Gentry, 363 S.C. at 102–03, 610 S.E.2d at 500 (emphasis added). "In determining whether an indictment meets the sufficiency standard, the trial court must look at the indictment with a practical eye in view of all the surrounding circumstances." State v. Tumbleston, 376 S.C. 90, 97, 654 S.E.2d 849, 853 (Ct.App.2007). In doing so, "one is to look at the 'surrounding circumstances' that existed pre-trial, in order to determine whether a given defendant has been 'prejudiced,' i.e., taken by surprise and hence unable to combat the charges against him." State v. Wade, 306 S.C. 79, 86, 409 S.E.2d 780, 784 (1991).

State v. Baker, 411 S.C. 583, 589, 769 S.E.2d 860, 863-64 (2015), reh'g denied (Apr. 9, 2015).

In Baker the Court found that prejudice resulted from the unconstitutionally overbroad indictments writing, "Examining the indictments in the instant case in view of all the surrounding circumstances, we find Baker was prejudiced as he was undoubtedly taken by surprise and significantly limited in his ability to combat the charges against him. Simply stated, there was no way for Baker to know "whether he [could] plead an acquittal." Gentry, 363 S.C. at 103, 610 S.E.2d at 500." 411 S.C. at 590, 769 S.E.2d at 864. As in Baker, Petitioner in the present case had no way of knowing whether he could plead an acquittal based on the expanded non-specific time frame alleged in the indictment for lewd act. While counsel for Petitioner was notified that the State intended to seek an expanded time frame, (R. p. 17, lines 5-10), Petitioner was undoubtedly taken by surprise when the expanded time frame was sought over two years after the original indictment providing a specific date.

While the time frame alleged in the indictment in Baker involved an expanded unspecified six year time period and the time frame alleged in the indictment in the present case involved an expanded unspecified almost three year time period (33 months), the new expanded time frame indictments in both cases was sought very close to the time of trial. In Baker the expanded indictment was sought two weeks prior to trial and in the present case the expanded indictment was sought eleven days prior to trial. The indictment in the present case is defective in the same way that the indictment was defective in Baker.

In affirming Petitioner's conviction the Court of Appeals, without referencing the Baker case, wrote:

> Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: State v. Tumbleston, 376 S.C. 90, 94, 654 S.E.2d 849, 851 (Ct. App. 2007) ("The trial court's factual conclusions as to the sufficiency of an indictment will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion."); id. ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion without evidentiary support."); id.

at 98-99, 654 S.E.2d at 853-54 (explaining the court uses a two-prong test to determine whether the period alleged in the indictment provides sufficient notice to a defendant: "(1) whether time is a material element of the offense; and (2) whether the time period covered by the indictment occurred prior to the return of the indictment by the grand jury."); id. at 101, 654 S.E.2d at 855 ("Time is not a material element of . . . committing a lewd act on a minor."); id. at 101-02, 654 S.E.2d at 855 ("[I]ndictments for a sex crime that allege offenses occurred during a specified time period are sufficient when the circumstances of the case warrant considering an extended time frame."); id. at 102, 654 S.E.2d at 855 ("The stealth and repetitive nature of the alleged conduct compels identification of the broader time period. The victim is a young child, whom one cannot reasonably expect to recall the exact dates of the sexual abuse."); State v. Wade, 306 S.C. 79, 82-83, 409 S.E.2d 780, 781-82 (1991) (refusing to adopt a per se rule that a two year time period in an indictment was unconstitutionally overbroad).

In Tumbleston, the defendant moved to quash the indictment as insufficient because it failed to allege the specific time of each offense intended to be charged. Tumbleston was indicted on four counts of criminal sexual conduct with a minor and one count of attempting a lewd act on a minor. Tumbleston was found guilty of two counts of criminal sexual conduct with a minor and lewd act. Finding the indictments sufficient, the Court of Appeals in Tumbleston wrote:

> Time is not a material element of either first-degree criminal sexual conduct with a minor or committing a lewd act on a minor. *See* S.C.Code Ann. §§ 16-3-655, 16-15-140 (2003 and Supp.2006). The State is not required to denote the precise day, or even year, of the accused conduct in an indictment charging criminal sexual conduct. Thompson, 305 S.C. at 501, 409 S.E.2d at 423. Indeed, indictments for a sex crime that allege offenses occurred during a specified time period are sufficient **when the circumstances of the case warrant considering an extended time frame.** Nicholson, 366 S.C. at 574, 623 S.E.2d at 103; . . .

376 S.C. at 101–02, 654 S.E.2d at 855 (emphasis added). The Court in Tumbleston found that the circumstances of the case warranted the broader time frame writing, "The stealth and repetitive nature of the alleged conduct compels identification of the broader time period. The victim is a young child, whom one cannot reasonably expect to recall the exact dates of the sexual abuse. B.J. verified the abuse began while she was in kindergarten, and she ensured the

end of the abuse when she disclosed the offenses to her mother." Tumbleston, 376 S.C. at 102, 654 S.E.2d at 855 (Ct. App. 2007).

The challenge in the present was not for failing to allege the specific date of each offense charged as in Tumbleston. Instead, the challenge in the present case was to the indictments as being unconstitutionally overbroad and vague by alleging an unspecified expanded time frame without circumstances to justify such an unspecified expanded time frame. The present case is distinguished from Tumbleston because in the present case the State failed to present circumstances to warrant the non-specific expanded time frame. Additionally, the alleged time frame in the present case was even less specific than the time frame in Tumbleston. The minor in Tumbleston was able to state that the abuse began when she was in kindergarten and continued throughout the second grade. In the present case the State did not attempt to show a time frame based on the grade the minor was in when the alleged abuse started, as in Tumbleston. The State did not attempt to show a time frame based on a period of summer months, as noted in footnote #5 in Baker. In the present case the State failed to present circumstances warranting the unspecified expanded time frame as were presented in Tumbleston.

In Wade the defendant urged the Court to adopt a *per se* rule that a two year time period alleged in an indictment is unconstitutionally overbroad. This Court declined to adopt a *per se* rule and instead viewed the sufficiency of the indictment from a practical standpoint, with all the circumstances of the particular case in mind. In Wade this Court wrote:

> **In this case, the indictment time span was narrowed as much as possible under the circumstances.** The victim was eight years old at the time of trial. She testified that the sexual offense occurred on only one occasion. She was unable to pinpoint the exact date on which this offense took place. The defendant testified that he was in the vicinity of the victim at relatively few times. The defendant lived in Athens, Georgia for much of the time of the indictment period. He claimed that from March to May of 1984, he returned to North Augusta (where the victim resided) one night a week to visit his wife and children. After this, the

> defendant testified that he returned to North Augusta only four times through December of 1985. The first was Christmas Day in 1984; the second was over the July Fourth weekend in 1985; the third was a one day visit in August of 1985; and the fourth was for a wedding in October of 1985.

306 S.C. at 84, 409 S.E.2d at 783. (emphasis added).

Unlike Wade who was around the minor limited times, Petitioner in the present case lived in the home with the minor during part of the almost three year time period alleged in the indictment and at other times during that period he was out of town as a long distance truck driver. (R. p. 17, lines 11-20). There is nothing to demonstrate that in the present case the State attempted to narrow the time span as much as possible as in Wade.

Petitioner is not asking for a *per se* rule in regard to expanded time frames. Instead, the reading of Baker, in conjunction with Tumbleston and Wade, establishes that expanded time frames may be constitutionally sound only when the circumstances of the case warrant an expanded time frame and the time frame is narrowed as much as possible. Expanded unspecified time frames should be the exception instead of the norm, should be justified by special circumstances, and narrowed as much as possible, especially when the indictment is amended to expand the time frame close to the trial date. The State failed to demonstrate that special circumstances justified the expanded time frame. There is nothing in the present record to indicate that the time span was narrowed as much as possible. In fact, while the time frame alleged in the indictment begins in January of 2010, the mother of the minor testified that she did not start dating Petitioner until May of 2010. (R. p. 63, lines 17-19). While the forensic interviewer asked multiple questions about the alleged abuse, very few questions were asked in regard to time frame. (State's Exhibit #3). The State failed to demonstrate special circumstances to justify the expanded time frame and failed to narrow the time frame as much as possible.

As persuasive authority, in Georgia a defendant can file a special demurrer and ask that the indictment be quashed as imperfect when the indictment fails to allege a specific date. State v. Layman, 279 Ga. 340, 341, 613 S.E.2d 639 (2005). The Georgia Appellate Courts recognize an exception to this rule when the State can demonstrate that it is unable to identify a specific date. In Watkins v. State, 336 Ga. App. 145, 147–48, 784 S.E.2d 11, 14–15 (2016), the Georgia Court of Appeals wrote:

> Generally, an indictment which fails to allege a specific date on which the crime was committed is not perfect in form and is subject to a timely special demurrer. However, where the State can show that the evidence does not permit it to allege a specific date on which the offense occurred, the State is permitted to allege that the crime occurred between two particular dates. O'Rourke v. State, 327 Ga.App. 628, 631–632(2), 760 S.E.2d 636 (2014) (citing Layman, 279 Ga. at 340–341, 613 S.E.2d 639); Blanton v. State, 324 Ga.App. 610, 614(2), 751 S.E.2d 431 (2013) (same). To that end, "[i]n meeting its burden of showing that it is unable either to identify a specific date on which an offense occurred or to narrow the range of possible dates, the State is required to present some evidence and may not rely solely upon argument by counsel or mere speculation." Blanton, 324 Ga.App. at 615(2), 751 S.E.2d 431.

The law in Georgia is consistent with Baker, Tumbleston and Wade in requiring the State to show circumstances to warrant an extended timeframe and requiring the State to show that the time span in the indictment was narrowed as much as possible.

In New York the indictment must state the date and time of the offense to the best of the People's knowledge. In People v. Garcia, 141 A.D.3d 861, 863, 34 N.Y.S.3d 766, 769–70 (N.Y. App. Div.), leave to appeal denied, 28 N.Y.3d 929, 63 N.E.3d 78 (2016), the Court wrote:

> "When time is not an essential element of an offense, the indictment, as supplemented by a bill of particulars, may allege the time in approximate terms[, so long as it] set[s] forth a time interval which reasonably serves the function of protecting [the] defendant's constitutional right to be informed of the nature and cause of the accusation" (People v. Watt, 81 N.Y.2d 772, 774, 593 N.Y.S.2d 782, 609 N.E.2d 135 [1993] [internal quotation marks and citations omitted]; accord People v. Porlier, 55 A.D.3d 1059, 1060, 865 N.Y.S.2d 732 [2008]). "Reasonableness and fairness demand that the indictment state the date and time of the offense to the best of the People's knowledge, after a reasonably

> thorough investigation has been undertaken to ascertain such information" (People v. Morris, 61 N.Y.2d 290, 296, 473 N.Y.S.2d 769, 461 N.E.2d 1256 [1984]; see People v. Jabot, 93 A.D.3d 1079, 1080, 941 N.Y.S.2d 311 [2012]). In assessing whether a more precise date could have been ascertained through diligent efforts, we may consider the age and intelligence of the victim, the relevant circumstances and "the nature of the offense, including whether it is likely to occur at a specific time or is likely to be discovered immediately" (People v. Morris, 61 N.Y.2d at 296, 473 N.Y.S.2d 769, 461 N.E.2d 1256; see People v. Watt, 81 N.Y.2d at 774–775, 593 N.Y.S.2d 782, 609 N.E.2d 135). If we conclude that the People made diligent efforts, we then determine whether the time period alleged was reasonable by considering, among other factors, the ability of the victim to particularize the date of the offense and the passage of time between the alleged offense and the defendant's arrest and/or the date of the indictment (see People v. Morris, 61 N.Y.2d at 296, 473 N.Y.S.2d 769, 461 N.E.2d 1256).

The law in Georgia is consistent with Baker, Tumbleston and Wade in requiring the State to show circumstances to warrant an extended timeframe and requiring the State to show that the time span in the indictment was narrowed as much as possible.

In Baker, this Court wrote:

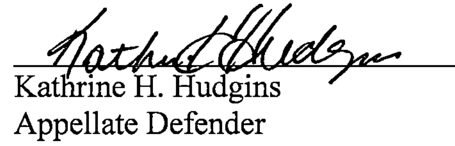
> Given the expansive time frame and lack of specificity as to this time frame, we can only conclude Baker was prejudiced by the defects in the indictments. Although we recognize the difficulty the prosecution faces in identifying exact dates in child sexual abuse cases, the class of criminal case should not translate into an exception that operates to circumvent constitutional and statutory principles.

411 S.C. at 592, 769 S.E.2d at 865.

Petitioner in the present case was prejudiced by the unspecified two year expanded time frame alleged in the lewd act indictment. The State failed to show special circumstances warranting the expanded time frame and failed to demonstrate that the time frame had been narrowed as much as possible. The defect requires reversal. As in Baker, the State may seek a more time specific indictment alleging lewd act.

CONCLUSION

Based upon the above argument, this court should reverse Petitioner's conviction and sentence.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of February, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

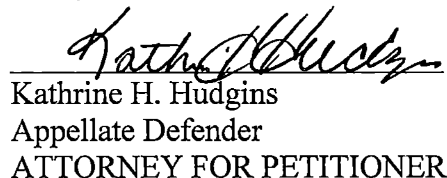
V.

MICHAEL GENTILE,

PETITIONER

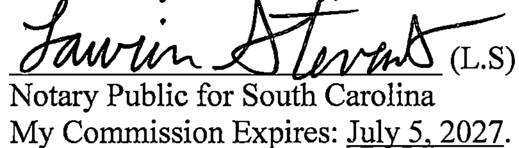
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Petitioner in the above referenced case has been served upon William F. Schumacher, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Brief of Petitioner has been served on Michael Gentile, #364416, at Allendale Correctional Institution, PO Box 1151, Hwy. 47, Fairfax, SC 29827, this 12th day of February, 2018.



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me this 12th day of February, 2018.



(L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.